

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2014-0520

MANDATORY PENALTY
IN THE MATTER OF

ELK GROVE WATER DISTRICT
ELK GROVE WATER SERVICE MAINTENANCE PROJECT
SACRAMENTO COUNTY

This Complaint is issued to the Elk Grove Water District (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, Water Code section 13323, which authorizes the Executive Officer to issue this Complaint and Water Code section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders R5-2008-0081-059 and R5-2013-0074-059 (NPDES CAG995001).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. On 12 June 2008, the Central Valley Water Board adopted Waste Discharge Requirements Order R5-2008-0081 (Low Threat General Order) to regulate dewatering and other low threat discharges to surface waters. On 30 May 2013, the Central Valley Water Board adopted WDRs Order R5-2013-0074, which rescinded and replaced Order R5-2008-0081, except for enforcement purposes.
2. On 3 March 2010, the Discharger submitted a Notice of Intent and a Pollution Prevention and Monitoring and Reporting (PPMRP) for coverage under Order R5-2008-0081 for discharges from a potable water system. On 19 July 2010 Board staff issued a Notice of Applicability and assigned the project General Order No. R5-2008-0081-059. On 10 January 2012, Board staff issued a revised Notice of Applicability that included an additional discharge from the Discharger's potable water system and a revised PPMRP. The Discharger continues to be covered under the new Low Threat General Order R5-2013-0074, which was adopted on 31 May 2013.
3. This Complaint addresses administrative civil liability for effluent violations that occurred during the period from 1 April 2011 through 30 September 2013. These violations are specifically identified in Attachment A to this Complaint as subject to mandatory minimum penalties (MMPs). Attachment A to this Complaint is attached hereto and incorporated herein by this reference.
4. On 24 January 2014, Central Valley Water Board staff issued the Discharger a Record of Violations for the time period of 1 April 2011 through 30 September 2013. On 6 February 2014, the Discharger responded and disagreed with the MMP violations, stating that based on prior experiences of sampling with similar types of discharges, the chlorine

residual and pH exceedances would not have occurred if proper sampling procedures were practiced. However, the Discharger did not supply any evidence such as monitoring results at the storm drain inlet showing that the exceedances did not occur. Therefore, Board staff continues to allege the chlorine and pH violations in this Complaint.

5. Water Code section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

Water Code section 13385 (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

Water Code section 13385 subdivision (i)(1) states, in part:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

6. Water Code section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

7. WDRs Orders R5-2008-0081 and R5-2013-0074 Effluent Limitations V.A.1.a., include, in part, the following effluent limitation:

- a. The discharge of pollutants from dewatering and other low threat discharges shall not exceed the following effluent limitations:

Parameter	Units	Effluent Limitations
		Maximum Daily
Biochemical Oxygen Demand (5-day @ 20°C)	mg/L	30

8. WDRs Orders R5-2008-0081 and R5-2013-0074 Effluent Limitations V.A.1.b. include, in part, the following effluent limitation:

- b. Total Residual Chlorine. Effluent total residual chlorine shall not exceed:

- 0.011 mg/L, as a 4-hr average;

9. WDRs Orders R5-2008-0081 and R5-2013-0074 Effluent Limitations V.B.1., include, in part, the following effluent limitation:

1. **Final Effluent Limitations**...Discharges within the Sacramento and San Joaquin River Basins...

The pH of dewatering and other low threat discharges...shall at all times be within the range of 6.5 and 8.5.

10. According to the Discharger's self-monitoring reports, the Discharger committed three (3) serious Group II violations of the above effluent limitations contained in WDRs Orders R5-2008-0081 and R5-2013-0074, as shown in Attachment A. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels in the WDRs Orders by 20 percent or more. The mandatory minimum penalty for these serious violations is **nine thousand dollars (\$9,000)**.
11. According to the Discharger's self-monitoring reports, the Discharger committed four (4) non-serious violations of the above effluent limitations contained in Orders R5-2008-0081 and R5-2013-0074. One (1) of these non-serious violations is subject to mandatory penalties under Water Code section 13385 subdivision (i)(1) because the violation was preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for this non-serious violation is **three thousand dollars (\$3,000)**.
12. The total amount of the mandatory penalties assessed for the alleged effluent violations is **twelve thousand dollars (\$12,000)**. As stated herein, a detailed list of the alleged effluent violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.
13. On 14 February 2014, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Rancho Cordova Office. The 14 February 2014 Delegation of Authority also authorizes Andrew Altevogt to issue Administrative Civil Liability Complaints.

14. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

ELK GROVE WATER DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **twelve thousand dollars (\$12,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 June 2014**, unless the Discharger does one of the following by **4 April 2014**:
 - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board. In addition, submits payment for the proposed civil liability of **twelve thousand dollars (\$12,000)** to the State Water Board. The waiver and a copy of the check to the Central Valley Water Board; or
 - b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or
 - c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

ANDREW ALTEVOGT, Assistant Executive Officer

7 March 2014

DATE

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the Elk Grove Water District (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2014-0520 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **twelve thousand dollars (\$12,000)** by check that references "ACL Complaint R5-2014-0520" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office at PO Box 1888, Sacramento, California, 95812-1888 by **4 April 2014**. The waiver and a copy of the check must be submitted to the Central Valley Water Board at 11020 Sun Center Drive #200, Rancho Cordova California, 95670 by **4 April 2014**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A TO ACLC R5-2014-0520
Elk Grove Water District
Elk Grove Water Service Maintenance Project**

RECORD OF VIOLATIONS (1 April 2011 through 30 September 2013) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2008-0538-059 and R5-2013-0074-059)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	4/18/2012	Chlorine Residual	mg/L	0.011 ¹	0.2	4-hour Average	2	961894
2	4/18/2012	Chlorine Residual	mg/L	0.011 ¹	0.13	4-hour Average	2	961897
3	4/26/2012	BOD	mg/L	30	34	Daily Maximum	3	961898
4	4/26/2012	pH	Std. Units	6.5	5.5	Instantaneous Minimum	4	961900
5	8/1/2012	Chlorine Residual	mg/L	0.011 ¹	0.91	4-hour Average	2	961903
6	8/21/2013	Chlorine Residual	mg/L	0.011 ¹	0.09	4-hour Average	3	961904

¹ Any excursion above the 1-hour average or 4-day average effluent limitation and greater than or equal to a reporting level of 0.08 mg/L is a violation.

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violation falls within the first three violations in a six-month period, thus is not subject to MMPs.
4. Non-serious violation subject to mandatory minimum penalties.

VIOLATIONS AS OF: 9/30/2013

Group I Serious Violations:	0
Group II Serious Violations:	3
Non-Serious Violations Not Subject to MMPs:	2
<u>Non-serious Violations Subject to MMPs:</u>	<u>1</u>
Total Violations Subject to MMPs:	4

Mandatory Minimum Penalty = (3 Serious Violations + 1 Non-Serious Violations) x \$3,000 = \$12,000